IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 1125 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ? **-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ? **-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? **-No.**

5 Whether it is to be circulated to the civil judge ? **-No.**

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ASHOK KUNDANLAL KHATWANI - Applicant(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR PRAFULL K PATHAK for Applicant(s) : 1,
PUBLIC PROSECUTOR for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2,
RULE SERVED for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 29/12/2005

ORAL JUDGMENT

1.Ashokbhai Kundanlal Khatwani, petitioner has filed this petition under Article 226 and 227 of the Constitution of India for quashing and setting aside the impugned order dated 14/7/2005 passed by the Deputy Commissioner

of Police, Ahmedabad, respondent no.2 under Section 56(b) of the Bombay Police Act, 1951, externing the petitioner and also order passed by the Deputy Secretary, Home Department, New Sachivalaya, Gandhinagar, respondent no.3 dated 10/8/2005, rejecting the appeal. Petition was filed on 25/8/2005.

2. This Court has issued Rule on 5/9/2005 which was returnable. On behalf of respondent, Mr.L.R.Pujari, learned APP appears. With consent of parties, matter has been taken up for final hearing to this Court today.

3. The learned advocate for the petitioner has stated that though there are several grounds, he desires to raise only one ground in this behalf. He has stated that show cause notice has been issued on 2/6/2004 to the petitioner and petitioner has filed reply. However, the order of externment was passed on 14/7/2005. Though the order of externment has been passed after about one year, there is no explanation in the order as to why there is a delay in passing the order. The authority has not filed any reply in this behalf also. The Appellate Authority has also not considered the same. For the same, the learned advocate for the petitioner

has relied upon the judgment of this Court (Coram:K.M.Mehta, J.) in the case of Dilaji Bharthaji Vihol v. Deputy Commissioner of Police and another in Special Criminal Application No.1451 of 2005 decided on 1/12/2005. The learned advocate has also relied upon another judgment of this Court (Coram:K.M.Mehta, J.) in Special Criminal Application No.1547 of 2005 decided on 29/12/2005.

4. I have considered the provisions of Section 56 and 59 of the Bombay Police Act. I have also considered judgment cited by the petitioner. In my view, the externing authority has passed an order after great delay therefore, the order of externment is required to be quashed and set aside.

5. In the result, petition is allowed. Order of externment dated 14/7/2005 is quashed and set aside and order dated 10/8/2005, confirming the order of externment is also quashed and set aside. Rule is made absolute with no order as to costs. Direct service is permitted.

(K.M.MEHTA, J.)

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